



Contract #

059122

## STATE OF UTAH CONTRACT

1. **CONTRACTING PARTIES:** This contract is between the following agency of the State of Utah:  
**Department of Transportation**, Agency Code: **810**, **Region Four (4)**, referred to as (STATE), and the following  
CONTRACTOR:

**Asay Marketing Services**

Name

**380 N 200 W, Suite 104**

Address

**Bountiful**  
City**Utah**  
State**84010**  
ZipContact Person  
Federal Tax ID**David J. Asay**  
# **87-0452440**Phone # **801.292.3555**  
Vendor # **20076F**Email **dave@asaymarketing.com**  
Commodity Code # **91503000000****LEGAL STATUS OF CONTRACTOR**

- ☐ Sole Proprietor  
☐ Non-Profit Corporation  
☒ For-Profit Corporation  
☐ Partnership  
☐ Government Agency

2. **GENERAL PURPOSE OF CONTRACT:** The general purpose of this contract is to provide: **public involvement and information services in conjunction with construction activities on St. George Boulevard.**
3. **PROCUREMENT:** This contract is entered into as a result of the procurement process on RX#, **810 56-060**, FY **05**, Bid# **NO5534**.
4. **CONTRACT PERIOD:** Effective date **November 29, 2004** Termination date **November 28, 2006**, unless terminated early or extended in accordance with the terms and conditions of this contract.
5. **CONTRACT COSTS:** CONTRACTOR will be paid a maximum of **\$46,149.00** for costs authorized by this contract.
6. **ATTACHMENT A:** Division of Purchasing's Standard Terms and Conditions  
**ATTACHMENT B:** Scope of Work and Pricing  
**ATTACHMENT C:** Special Terms and Conditions
- Any conflicts between Attachment A and other Attachments will be resolved in favor of Attachment A.**
7. **DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:**
- All other governmental laws, regulations, or actions applicable to the goods and/or services authorized by this contract.
  - Utah State Procurement Code, Procurement Rules, and CONTRACTOR'S response to Bid # **NO5534** dated **November 23, 2004**.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

**CONTRACTOR**

David J. Asay 12/2/04  
Signature Date

**David J. Asay, President and CEO****STATE**

Kelvin G. Thacker 12 DEC 04  
Kelvin G. Thacker, Procurement Manager Date

[Signature] 12-6-04  
Director, Division of Purchasing Date

[Signature] DEC - 6 2004  
Director, Division of Finance Date

James T. Phillips, C.P.M., A.P.P.  
Agency Contact Person

801.965.3836  
Telephone Number

801.9654073  
Fax Number

jamesphillips@utah.gov  
Email Address

## ATTACHMENT A

### STANDARD TERMS AND CONDITIONS

1. **AUTHORITY:** Provisions of this contract are pursuant to the authority set forth in 63-56, Utah Code Annotated, 1953, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the STATE to purchase certain specified services, and other approved purchases for the STATE.
2. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** The provisions of this contract shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract or the breach thereof. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** Any and all supplies, services and equipment furnished will comply fully with all applicable Federal and state laws and regulations.
4. **RECORDS ADMINISTRATION:** The Contractor shall maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this contract. These records shall be retained by the Contractor for at least four years after the contract terminates, or until all audits initiated within the four years, have been completed, whichever is later. The Contractor agrees to allow state and Federal auditors, and State Agency Staff, access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.
5. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the State of Utah, unless disclosure has been made in accordance with 67-16-8, Utah Code Annotated, 1953, as amended.
6. **CONTRACTOR, AN INDEPENDENT CONTRACTOR:** The Contractor shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind the STATE to any agreements, settlements, liability, or understanding whatsoever, and agrees not to perform any acts as agent for the STATE, except as herein expressly set forth. Compensation stated herein shall be the total amount payable to the Contractor by the STATE. The Contractor shall be responsible for the payment of all income tax and social security amounts due as a result of payments received from the STATE for these contract services. Persons employed by the STATE and acting under the direction of the STATE shall not be deemed to be employees or agents of the Contractor.
7. **INDEMNITY CLAUSE:** The Contractor agrees to indemnify, save harmless, and release the State of Utah, and all its officers, agents, volunteers, and employees from and against any and all loss, damages, injury, liability, suits, and proceedings arising out of the performance of this contract which are caused in whole or in part by the negligence of the Contractor's officers, agents, volunteers, or employees, but not for claims arising from the STATE's sole negligence.
8. **EQUAL OPPORTUNITY CLAUSE:** The Contractor agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the Contractor agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the work place.
9. **SEPARABILITY CLAUSE:** A declaration by any court, or any other binding legal source, that any provision of this contract is illegal and void shall not affect the legality and enforceability of any other provision of this contract, unless the provisions are mutually dependent.
10. **RENEGOTIATION OR MODIFICATIONS:** This contract may be amended, modified, or supplemented only by written amendment to the contract, executed by the same persons or by persons holding the same position as persons who signed the original agreement on behalf of the parties hereto, and attached to the original signed copy of the contract.
11. **DEBARMENT:** The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract), by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the STATE. The Contractor must notify the STATE Director of Purchasing within 30 days if debarred by any governmental entity during the Contract period.
12. **TERMINATION:** Unless otherwise stated in the Special Terms and Conditions, this contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violations, after which the contract may be terminated for cause. This contract may be terminated without cause, in advance of the specified expiration date, by either party, upon 15 days prior written notice being given the other party. On termination of this contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.
13. **NONAPPROPRIATION OF FUNDS:** The Contractor acknowledges that the STATE cannot contract for the payment of funds not yet appropriated by the Utah State Legislature. If funding to the STATE is reduced due to an order by the Legislature or the Governor, or is required by STATE law, or if federal funding (when applicable) is not provided, the STATE may terminate this contract or proportionately reduce the services and purchase obligations and the amount due from the STATE upon 30 days written notice. In the case that funds are not appropriated or are reduced, the STATE will reimburse Contractor for products delivered or services performed through the date of cancellation or reduction, and the STATE will not be liable for any future commitments, penalties, or liquidated damages.
14. **SALES TAX EXEMPTION:** The State of Utah's sales and use tax exemption number is E33399. The tangible personal property or services being purchased are being paid from STATE funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the contract.
15. **WARRANTY:** The contractor agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the State of Utah under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah apply to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will

be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable for any special purposes that the STATE has relied on the contractor's skill or judgment to consider when it advised the STATE about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the STATE has not been warned. Remedies available to the STATE include the following: The contractor will repair or replace (at no charge to the STATE) the product whose nonconformance is discovered and made known to the contractor in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the STATE of Utah may otherwise have under this contract.

16. **PUBLIC INFORMATION:** Contractor agrees that the contract will be a public document, and may be available for distribution. and Contractor gives the STATE express permission to make copies of the contract and/or of the response to the solicitation in accordance with the State of Utah Government Records Access and Management Act. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation.
17. **DELIVERY:** Unless otherwise specified in this contract, all deliveries will be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the STATE except as to latent defects, fraud and Contractor's warranty obligations.
18. **ORDERING AND INVOICING:** All orders will be shipped promptly in accordance with the delivery schedule. The Contractor will promptly submit invoices (within 30 days of shipment or delivery of services) to the STATE. The STATE contract number and/or the agency purchase order number shall be listed on all invoices, freight tickets, and correspondence relating to the contract order. The prices paid by the STATE will be those prices listed in the contract. The STATE has the right to adjust or return any invoice reflecting incorrect pricing.
19. **PAYMENT:** Payments are normally made within 30 days following the date the order is delivered or the date a correct invoice is received, whichever is later. All payments to the Contractor will be remitted by mail unless paid by the State of Utah's Purchasing Card.
20. **PATENTS, COPYRIGHTS, ETC.:** The Contractor will release, indemnify and hold the STATE, its officers, agents and employees harmless from liability of any kind or nature, including the Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article or appliance furnished or used in the performance of this contract.
21. **ASSIGNMENT/SUBCONTRACT:** Contractor will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the STATE.
22. **DEFAULT AND REMEDIES:** Any of the following events will constitute cause for the STATE to declare Contractor in default of the contract: 1. Nonperformance of contractual requirements; 2. A material breach of any term or condition of this contract. The STATE will issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains, after Contractor has been provided the opportunity to cure, the STATE may do one or more of the following: 1. Exercise any remedy provided by law; 2. Terminate this contract and any related contracts or portions thereof; 3. Impose liquidated damages, if liquidated damages are listed in the contract; 4. Suspend Contractor from receiving future solicitations.
23. **FORCE MAJEURE:** Neither party to this contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The STATE may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.
24. **PROCUREMENT ETHICS:** The Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan or reward, or any promise thereof to any person acting as a procurement officer on behalf of the STATE, or who in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization (63-56-73, Utah Code Annotated, 1953, as amended).
25. **CONFLICT OF TERMS:** Contractor Terms and Conditions that apply must be in writing and attached to the contract. No other Terms and Conditions will apply to this contract including terms listed or referenced on a Contractor's website, terms listed in a Contractor quotation/sales order, etc. In the event of any conflict in the contract terms and conditions, the order of precedence shall be: 1. STATE Standard Terms and Conditions; 2. STATE Special Terms and Conditions; 3. Contractor Terms and Conditions.

(Revision date: Nov 21, 2003)

## ATTACHMENT B

### SCOPE OF WORK

The Public Involvement/Information Manager (PIM) will perform public involvement and information duties connected with construction activities on St. George Boulevard, prior to and for the duration of the construction project, a time period anticipated to be 18 months. The level of effort required to complete this job is estimated to not exceed a maximum of 1,200 hours. The PIM is to coordinate all information and public involvement activities with the construction contractor, the UDOT Resident Engineer and the Region Four Public Involvement Coordinator to facilitate communication and ensure smooth functioning of those activities on the project.

The primary contact for the PIM contractor will be the UDOT Resident Engineer. Secondary contacts include the UDOT Project Manager, the UDOT Region Four Public Involvement Coordinator, and the construction contractor's Project Manager and Public Involvement Coordinator. The PIM will begin contacting Boulevard businesses and residents, and other key project stakeholders to facilitate timely distribution of project information. A core contact list will be provided, but will need to be verified and updated by the PIM.

### DETAIL

- **Develop a Public Involvement Plan** for this project using UDOT's Public Involvement Plan template.
- **Coordinate with the construction contractor and UDOT Resident Engineer** to stay up-to-date on construction activities, schedules, and Maintenance of Traffic plans.
  - Attend, *at minimum*, two construction update meetings each month with the contractor to identify and resolve stakeholder issues. Coordinate daily during construction with the construction contractor and/or UDOT Resident Engineer to stay informed of construction activities.
- **Meet personally with residents and businesses along corridor** to discuss construction activities, gather comments and address concerns. Initiate and maintain communications with key stakeholders (including key St. George City officials, Washington County officials, and the local Chamber of Commerce) for the duration of the project, through personal visits, by telephone, email, or in small-group meetings.
  - Coordinate with the construction contractor, UDOT Resident Engineer and Region Four Public Involvement Coordinator to troubleshoot customer complaints.
- **Update and maintain comprehensive mailing and contact lists** for use in distributing project materials and informing stakeholders. The St. George Chamber has agreed to provide an initial list of affected stakeholders.
- **All materials prepared for public distribution** must be pre-approved by the Region Public Involvement Coordinator prior to distribution.
- **Administer and tally pre- and post-construction surveys** based on UDOT Region Four's pre- and post-construction survey "templates." A pre-construction survey, to determine public opinion entering construction in order to modify public involvement procedures and identify potential public involvement/information (PI) problem areas. A post-construction survey, to determine the effectiveness of PI and construction contractor performance during construction.
  - Tally the results of these surveys
- **Facilitate a Community Coordination Team (CCT)** that has been established by UDOT. The CCT will carry information from the committee to their neighbors regarding meeting schedules and construction activities, and provide feedback from the community to the committee, the construction contractor and UDOT about construction activities.
  - Assemble team members, schedule, organize, advertise and conduct regularly scheduled meetings; and report on and compile an administrative record of meetings.
- **Provide construction updates.**
  - Work with the construction contractor to compile construction update reports outlining scheduled construction activities at least one week in advance and distributed each week to the Region Public Involvement Coordinator and others identified during the course of the project.
  - Provide updates of construction activities that impact traffic or access to residences and/or businesses, to the Region Public Involvement Coordinator, directly impacted stakeholders who request notification, and other stakeholders identified by UDOT or the construction contractor.

- Compile and package project-related information for distribution to media through the Region Public Involvement Coordinator and UDOT Community and Media Relations.
- **Organize and attend public activities and meetings.**
  - Schedule, organize, advertise and facilitate one “meet the contractor” open house in coordination with UDOT and the construction contractor.
  - Schedule, organize, advertise and facilitate two “milestone” celebration activities during the project.
  - Schedule, organize, advertise, facilitate and provide a written report of other meetings (non CCT) identified as needed during the course of the project.
  - Attend neighborhood, community, local government and other meetings to provide project information and record stakeholder comments and concerns.
- **Prepare a construction information flier template** to be completed and distributed to residents and businesses along the corridor to inform them prior to the beginning of construction activities in their area.
- **Prepare, produce and distribute, at minimum, three newsletters** to inform project stakeholders prior to, during, and at the end of construction. The newsletters will outline anticipated construction activities and work schedules, explain the construction activities in everyday terms, and include additional information that will improve the construction experience for stakeholders.
- **Develop and maintain the Boulevard Reconstruction Website**, in compliance with UDOT Website standards (contact Bethany Eller at 801-965-4706), that gives project background, posts information about current and upcoming construction schedules, lists and answers frequently asked questions, and includes contact information.
- **Provide a dedicated contact phone with a message machine** for stakeholders, UDOT and construction contractor contacts during the course of the project.
  - May be a cell phone
  - Distribute the phone number to all project contacts, the UDOT Communications Office, construction contractor, UDOT Resident Engineer, Region Four Public Involvement Coordinator and Project Manager.
  - Follow-up on all stakeholder concerns within 24 hrs.
- **Provide project reports.**
  - Compile and submit a detailed report with each invoice to the Project Manager and Region Public Involvement Coordinator that includes at minimum:
    - An overview of public information and public involvement activities
    - A record of all stakeholder contacts
    - A record of all stakeholder questions and concerns
    - A record of all responses and resolutions to stakeholder questions and concerns
  - Compile and distribute a **post-project report** to the Project Manager and Region Public Involvement Coordinator that includes at minimum:
    - An overview of public information and public involvement activities from the beginning to the end of the project.
    - An analysis of what worked well and what did not work well concerning public information and public involvement during the project.
    - A database (in Microsoft Access format) of project contacts including the names, addresses, phone numbers and email addresses of all project stakeholders.
- **Other public information and public involvement duties** as needed and requested by the UDOT Resident Engineer, Project Manager or Region Public Involvement Coordinator.

#### **MATERIALS TO BE PRODUCED FOR THIS PROJECT:**

- **Pre- and Post-Construction Surveys**
  - 2 surveys
  - Print 150 each
  - 2-sided with cover letter
  - Black and white
  - Containers for survey distribution (such as clear plastic bags or manila envelopes)

- **Newsletters**
  - 3 newsletter editions—develop and print
    - Include layout and 2 drafts
  - Print 300 copies each
  - 2 sided w/ mailer
  - 4-color with photographs
  - Quality paper stock
- **Fliers**
  - Print informational fliers using template developed and modifying project information as needed
  - Print 200 copies (at minimum) per flier
  - One sheet, 1-sided
  - Black and white on colored paper
- **Business/Project Contact Cards**
  - Print 1,000 cards
  - 1-sided
  - Black and white
  - Card stock
- **Additional Materials**
  - Meeting notifications; collateral including FAQs, fact sheets, etc.
  - Print approximately 1000 pages in total
  - 1 or 2 sided, multiple pages as needed
  - Black and white
  - No special paper requirements

<b>P R I C I N G</b>	
Public Information and Involvement Services (See CONTRACTOR's Quotation for detail.)	\$44,840.00
Materials	\$1,309.00
Work on this contract is being conducted at a fully loaded, blended rate of \$50.00 per hour	
<b>TOTAL</b>	<b>\$46,149.00</b>

## **ATTACHMENT C**

### **SPECIAL TERMS AND CONDITIONS**

**PAYMENT INFORMATION:** The CONTRACTOR shall submit invoices to the Utah Department of Transportation, Attention: Tamerha Maxwell, Project Manager, 1470 Airport Road, Cedar City, Utah 84720. The contract number shall appear on all invoices and correspondence. Upon approval of the invoice by the STATE, remittance will be sent by mail.

**CHANGE IN PERSONNEL:** No change in personnel assigned to individual projects will be permitted without prior written approval by the STATE. All personnel must be available during the time frames specified on individual projects.

**PROGRESS:** The CONTRACTOR may be asked to prepare reports in sufficient detail to document the progress of the work. The CONTRACTOR will be required to perform such additional work as may be necessary to correct errors in the work required under the contract without undue delays and without additional cost to the STATE. Should the STATE desire to suspend the work, but not terminate the contract, this will be done by verbal notification followed by written confirmation from the STATE. The work may be reinstated upon 30 days advance written notice from the STATE.

Unless extended, or terminated, in writing this contract will terminate on the expiration date, or at the end of the specified calendar days.

**RESPONSIBILITY FOR WAGES:** The CONTRACTOR is responsible for all applicable company wages in accordance with the federal, STATE and local laws and ordinances.

**NON-COMPETE AGREEMENTS:** The CONTRACTOR represents that its officers and employees are free to contract with the STATE and are not subject to restrictions by the terms of their present or past employment including, but not limited to, an agreement not to compete for a period of time, unless disclosure has been made. A CONTRACTOR must disclose to the STATE any possible conflicts, in writing, before the contract is signed, and the STATE will evaluate whether to continue with contract execution. The STATE may elect to terminate a contract immediately with a CONTRACTOR who is subsequently determined to be subject to such restrictions, without liability to the STATE. If the STATE elects to terminate the contract for this reason, the STATE will supersede paragraph #12 in Attachment A - Standard Terms and Conditions, and will not provide 15 day prior notice to the CONTRACTOR.

**NON-PERFORMANCE:** If, at any time, the individuals proposed fail to demonstrate the required expertise (as represented in the CONTRACTOR's proposal) or fail to meet acceptable standards of performance, the STATE reserves the right to require the CONTRACTOR to replace this individual with a competent individual. The STATE Project Manager must approve this replacement. If the CONTRACTOR fails to accomplish project objectives or meet schedule commitments established in meetings with the STATE Project Manager, this contract may be canceled immediately. Waiver of any individual requirements shall not be deemed as a waiver of any other contract provisions. Lack of demand shall not be deemed of a requirement waiver. If the STATE elects to terminate the contract for non-performance, the STATE will supersede paragraph # 12 in Attachment A - Standard Terms and Conditions, and will not provide 15 day prior notice to the CONTRACTOR.